

By: Pena

H.B. No. 382

A BILL TO BE ENTITLED

AN ACT

relating to a journalist's testimonial privilege.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 22, Civil Practices and Remedies Code, is amended by adding Section 22.012 to read as follows:

Sec. 22.012. JOURNALIST'S TESTIMONIAL PRIVILEGE. (a)

Definitions:

(1) "Journalist" means a person who, for financial gain or livelihood, is engaged in gathering, compiling, preparing, collecting, photographing, recording, writing, editing, reporting, investigating, processing or publishing news or information in a tangible form that is distributed or intended to be distributed to a group of people by any news medium or through any communication service provider. This includes anyone who supervises or assists the journalist in gathering, preparing, or dissemination of news or information.

(2) "News medium" means any newspaper, magazine, or other periodical, book publisher, news agency, wire service, radio or television station or network, system or carrier, or audio or audiovisual production company or internet company or provider that disseminates news or information to the public by any means, including, but not limited to, print, television, radio, photographic, mechanical, electronic or other means now known or

1 hereafter devised. This includes any parent, subsidiary, division,
2 or affiliate of the foregoing entities to the extent the subpoena or
3 other compulsory process seeks the identity of a source of the news
4 or information described herein.

5 (3) "Communication service provider" means any person
6 that transmits information of the customer's choosing by electronic
7 means; and includes a telecommunications carrier, an information
8 service provider, an interactive computer service provider, and an
9 information content provider as defined in section 3 and section
10 230 of the Communications Act of 1934 (47 U.S.C. 153, 230). This
11 includes any parent, subsidiary, division, or affiliate of the
12 aforementioned entities to the extent the subpoena or other
13 compulsory process seeks the identity of a source or the news or
14 information described herein.

15 (4) "Official proceeding" means any type of
16 administrative, executive, legislative, or judicial proceeding
17 that may be conducted before a public servant.

18 (5) "Public servant" means a person elected, selected,
19 appointed, employed or otherwise designated as one of the
20 following, even if the person has not yet qualified for office or
21 assumed the person's duties:

22 (A) an officer, employee or agent of government;

23 (B) a juror or grand juror;

24 (C) an arbitrator, referee, or other person who
25 is authorized by law or private written agreement to hear or
26 determine a cause or controversy;

27 (D) an attorney at law or notary public when

1 participating in the performance of a governmental function; or

2 (E) a person who is performing a governmental
3 function under a claim of right although the person is not legally
4 qualified to do so.

5 (b) Except as provided by Subsections (c) and (e), no
6 judicial, legislative, administrative, or other body with the power
7 to issue a subpoena or other compulsory process shall compel a
8 journalist to testify, produce, or otherwise disclose in an
9 official proceeding any confidential or nonconfidential
10 information, document, or item legally obtained or prepared while
11 acting as a journalist.

12 (c) Compelled disclosures otherwise prohibited under
13 Subsection (b) may be ordered only if a court of competent
14 jurisdiction, after providing the journalist, or one who employs or
15 has an independent contract with a journalist, notice and an
16 opportunity to be heard, determines by clear and convincing
17 evidence that:

18 (1) the person or entity seeking the information has
19 exhausted all reasonable efforts to obtain the information from
20 alternative sources;

21 (2) to the extent possible, the subpoena avoids
22 requiring production of a large volume of unpublished material and
23 is limited to the verification of published information and
24 surrounding circumstances relating to the accuracy of the published
25 information;

26 (3) reasonable and timely notice has been given of the
27 demand for documents or information;

1 (4) nondisclosure of the information would be contrary
2 to the public interest, taking into account both the public
3 interest in compelling disclosure and the public interest in
4 newsgathering; and

5 (5) the subpoena is not being used to obtain
6 peripheral, nonessential, or speculative information; and

7 (6) when sought in a criminal matter, there are
8 reasonable grounds, based on an alternative, independent source, to
9 believe that a crime has occurred, and that the information sought
10 is central to the investigation or prosecution, particularly with
11 respect to directly establishing guilt or innocence; or

12 (7) when sought in a civil matter, the disclosure is
13 relevant and material to the proper administration of justice and
14 is essential to the maintenance of a claim or defense of the person
15 seeking the testimony or production.

16 (d) An order to compel testimony or production of documents
17 as to which a journalist has asserted a privilege under this section
18 may be issued only after timely and sufficient notice to the
19 journalist and a hearing on the matter has been provided. The order
20 must include clear and specific findings as to the showing made by
21 the person seeking the testimony or production.

22 (e) Notwithstanding Subsection (b), a journalist does not
23 have a privilege against disclosure of any information or document
24 in the following circumstances:

25 (1) if the information or documents sought were
26 obtained as a result of the eyewitness observations of criminal
27 conduct or commitment of criminal conduct by the journalist,

1 including any physical evidence or visual or audio recording of the
2 observed conduct, provided that a court of law determines by clear
3 and convincing evidence that the party seeking the compelled
4 disclosure under this section has exhausted all reasonable efforts
5 to obtain the information from alternative sources. This section
6 does not apply where the alleged criminal conduct is the act of
7 communicating or processing the documents or information at issue;
8 or

9 (2) if the disclosure of the information or documents
10 sought is reasonably necessary to stop or prevent reasonably
11 certain death or substantial bodily harm.

12 (f) Publication or dissemination by the news media or
13 communications service provider of information or documents, or a
14 portion thereof, shall not constitute a waiver of the protection
15 from the compelled disclosure that is contained in Subsection (b).

16 (g) The source of any news or information or any news or
17 information obtained in violation of the provisions hereunder shall
18 be inadmissible in any action, proceeding, or hearing before any
19 judicial, legislative, or administrative body.

20 SECTION 2. Chapter 38, Code of Criminal Procedure, is
21 amended by adding Article 38.11 to read as follows:

22 Art 38.11 JOURNALIST'S TESTIMONIAL PRIVILEGE. Section 22.012,
23 Civil Practice and Remedies Code, applies to a criminal proceeding.

24 SECTION 3. This Act applies only to information, documents,
25 or items obtained or prepared for publication in a news medium after
26 the effective date of this Act.

27 SECTION 4. This Act takes effect September 1, 2007.